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**Thomas L. Gambaro**  
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**PATENT ENFORCEMENT COMPANY**  
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FILED 10 JUN 1 10:43 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**FLIR SYSTEMS, INC.**, an Oregon  
corporation,

Plaintiff,

v.

**PATENT ENFORCEMENT COMPANY**,  
an Oregon company

Previously:

**THOMAS L. GAMBARO**, an individual;  
and **MOTIONLESS KEYBOARD**  
**COMPANY**, an Oregon corporation

Defendants.

Case No. CV 10-0231-BR

**DEFENDANT MOTION 04**  
**"OUTSIDE COUNSEL ONLY"**  
**DISCOVERY AGREEMENT**

**DEMAND FOR JURY TRIAL**

**MOTION 04 TO ESTABLISH OUTSIDE COUNSEL ONLY AGREEMENT**

Pursuant to Rule 37 (a) the Defendants in this case that are U.S. Patent No.  
5,332,322 and PATENT ENFORCEMENT COMPANY, an Oregon company  
respectfully request the Court order the establishment of an "OUTSIDE COUNSEL  
ONLY" agreement for discovery purposes in this case to allow access to all documents in  
evidence for the ongoing production of documents requested and the previous case,  
**DEFENDANT MOTION 04 "OUTSIDE COUNSEL ONLY" DISCOVERY**  
**AGREEMENT**

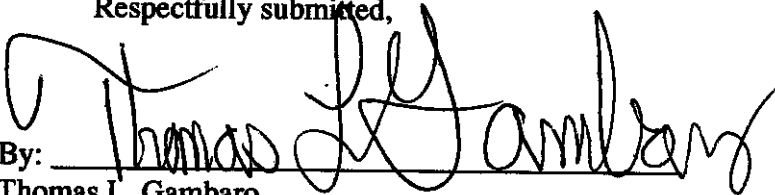
*Motionless Keyboard Company v. Microsoft Corporation et al.* case, that has rulings the Plaintiff FLIR has relied on for claims of non-infringement of U.S. Patent No. 5,332,322.

PATENT ENFORCEMENT COMPANY EXHIBIT 08 is the last page of the OPINION AND ORDER of Ann Aiken the presiding judge on the previous case of *Motionless Keyboard Company v. Microsoft Corporation et al.* and FLIR has based their case for non-infringement of U.S. Patent No. 5,332,322 on the erroneous and inaccurate claim constructions made by Judge Aiken in the OPINION AND ORDER. This is forwarded in Document 15 filed 04/29/2010 on Page 5 of 14 in section B. The Defendants also maintain FLIR infringements of the '322 prior to the Aiken Rulings.

A proper defense will require a complete review of the record including materials designated "OUTSIDE COUNSEL ONLY" the inventor of the '322 patent THOMAS L GAMBARO was previously denied access to review that were needed to direct counsel for the prosecution of the *Motionless Keyboard Company v. Microsoft Corporation et al.* case. DEFENDANT MOTION 04 is directed to correct these injustices. PATENT ENFORCEMENT COMPANY EXHIBIT 09 indicates the firm FLIR local counsel is refusing discovery in the statements made by attorney Devon Newman in paragraph two and provide the grounds for the Court to approve DEFENDANT MOTION 04.

Dated: June 1, 2010

Respectfully submitted,

By: 

Thomas L. Gambaro

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PATENT ENFORCEMENT COMPANY

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**DEFENDANT MOTION 04 "OUTSIDE COUNSEL ONLY" DISCOVERY  
AGREEMENT**

**Pg 2 of 3**

DNewman@SCHWABE.com

**Subject: RE: Discovery**

**Date:** May 28, 2010 3:55:39 PM PDT

**To:** thom.gambaro@gmail.com, CLewis@SCHWABE.com

**Cc:** bsorensen@schwabe.com

Mr. Gambaro:

Thank you for your clarification email. Mr. Lewis is out, and I am responding on FLIR's behalf.

We are working diligently on responses to Defendants' discovery requests and will have them to you in due course. We are willing to work with you to provide access to nonprivileged documents responsive to Request No. 1 in advance of the due date established under the federal rules (June 16th) because we understand you believe these documents are necessary for you to view before the hearing. Schwabe will work to make the pertinent non-privileged documents available for your inspection and copying as specified in the federal rules.

Before any production can occur, however, we need your agreement that this accommodation does not extend to any of the other document requests you propounded, and is subject to the objections that we set forth in the written response to your document request number 1. In particular, FLIR will object to the scope of the documents requested in Request No. 1 on the basis that the Request is overbroad because the work performed for Mr. Robinson regarding IRS filings for MKC was of a very limited duration in time, beginning long after 2000. FLIR will not provide billing documents because MKC was never billed for any work performed by Schwabe. Finally, FLIR will not provide any documents that are privileged and not related to the limited issue of IRS filings for MKC.

We anticipate being able to update you on our progress by the end of next week.

Thanks,

Devon Newman

**From:** thom.gambaro@gmail.com  
**Subject:** Re: Discovery  
**Date:** May 29, 2010 7:13:48 AM PDT  
**To:** DNewman@SCHWABE.com  
**Cc:** CLewis@SCHWABE.com

Mr. Newman,

I will look forward to all documents including billing information relating to Tom V. Robinson and MKC during the period specified that was the time of the conflict of interest as written in DOCUMENT PRODUCTION NO. 1. I specified the year 2000 because I was not sure of when the MKC work by SCHWABE was done.

The tone of your response indicates we may have a problem because during the Motionless Keyboard Company v Microsoft Corporation very non related discovery was demanded including personal email messages from friends having nothing to do with the case. The excuse given for the unjustified discovery was that being the defendants have the rights to construct a proper defense. Well now I am the defendant and will expect the same from FLIR to provide all the documents I request.

I will expect as well that you provide an OUTSIDE COUNSEL ONLY agreement to allow access to all documents from the Motionless Keyboard Company v Microsoft Corporation for my review on CD as well. You may consider this DOCUMENT PRODUCTION NO. 1A. These are all related to your only argument for non-infringement that is associated with the Aiken rulings. I will expect that you understand that I am the defendant now and will continue to request documents until they are produced.

I need to know immediately if there is going to be a problem with DOCUMENT PRODUCTION NO. 1A.

Best,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 8, 2010, a true copy of the foregoing **DEFENDANT MOTION 04 "OUTSIDE COUNSEL ONLY" DISCOVERY AGREEMENT** was served to the following counsel by hand delivery, electronic filing via e-mail with electronic signature and first class mail:

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Respectfully submitted,

June 1, 2010

By:



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